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STATUTORY INSTRUMENTS

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**1997 No. 784**

**PENSIONS**

**The Occupational Pension Schemes  
(Discharge of Liability) Regulations 1997**

<i>Made</i>	- - - -	<i>11th March 1997</i>
<i>Laid before Parliament</i>		<i>14th March 1997</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 12C, 19, 181(1), 182(2) and (3), 183(1) of the Pension Schemes Act 1993<sup>(1)</sup> and of all other powers enabling him in that behalf, after agreement by the Occupational Pensions Board that certain proposals embodied within these Regulations need not be referred to them, by this instrument, which otherwise contains regulations in Part II made for the purposes of consolidating regulations revoked herein<sup>(2)</sup>, hereby makes the following Regulations:

**PART I**  
**GENERAL**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1995 Act” means the Pensions Act 1995;

“the 1993 Act” means the Pension Schemes Act 1993;

“actuary” means—

- (a) a Fellow of the Institute of Actuaries, or
- (b) a Fellow of the Faculty of Actuaries, or

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(1) 1993 c. 48. See definition in section 181(1) of “prescribed” and “regulations”. Section 12C was inserted by section 136 of the Pensions Act 1995 (c. 26).  
(2) See section 185(1), (2)(b) and (6) of the Pension Schemes Act 1993 and section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

- (c) a person with actuarial qualifications who is approved by the Secretary of State;  
 “pensionable age” has the same meaning as in section 181 of the 1993 Act<sup>(3)</sup>;  
 “relevant scheme” has the same meaning as in section 12C of the 1993 Act<sup>(4)</sup>;  
 “supplementary credits” has the same meaning as in section 75 of the 1993 Act; and  
 “trustees”, in relation to an occupational pension scheme which is not set up or established under a trust, means the managers of that scheme.
- (3) In these Regulations a reference—
- (a) to a numbered regulation is to the regulation bearing that number in these Regulations;
- (b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation; and
- (c) in a regulation to a numbered Part is to the Part bearing that number in these Regulations.

## PART II

### DISCHARGE OF LIABILITY WHERE GUARANTEED MINIMUM PENSIONS, SHORT SERVICE BENEFITS AND ALTERNATIVES TO SHORT SERVICE BENEFITS ARE SECURED BY INSURANCE POLICIES OR ANNUITY CONTRACTS

#### Requirements applying to policies of insurance and annuity contracts

2.—(1) The requirements referred to in section 19(4)(a)(ii) of the 1993 Act (requirements applying to policies of insurance or annuity contracts for the purposes of discharging liabilities for guaranteed minimum pensions) are that the insurance policy is taken out or the annuity contract is entered into with an insurance company which is—

- (a) authorised under section 3 or 4 of the Insurance Companies Act 1982<sup>(5)</sup> (authorization of insurance business); or
- (b) in the case of a Friendly Society, authorised under section 32 of the Friendly Societies Act 1992<sup>(6)</sup> (activities of Friendly Societies: long-term business) to carry out long-term business under any of the Classes specified in Head A of Schedule 2 of that Act; or
- (c) an EC company as defined in section 2 of the Insurance Companies Act 1982<sup>(7)</sup> falling within paragraph (2) below.
- (2) An EC company falls within this paragraph if it—
- (a) carries on ordinary long-term insurance business in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 as are applicable have been complied with; or
- (b) provides ordinary long-term insurance in the United Kingdom and such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 as are applicable have been complied with in respect of the insurance.

(3) The definition of “pensionable age” was substituted by the Pensions Act 1995, Schedule 4, paragraph 17.

(4) Section 12C was inserted by section 136(5) of the Pensions Act 1995.

(5) 1982 c. 52.

(6) 1992 c. 40.

(7) Section 2 was amended by regulation 4(2) of S.I. 1994/1698 and 3132.

### **Conditions on which policies of insurance and annuity contracts may be assigned or surrendered**

3. The conditions referred to in section 19(4)(b) of the 1993 Act (policy of insurance or annuity contract appropriate for the purposes if it may not be assigned or surrendered except on conditions which satisfy prescribed requirements) are—

- (a) that the written consent of the earner or, if the earner has died, the earner's widow or widower to the assignment or surrender is obtained; and
- (b) that in consideration of the assignment or surrender the benefits previously secured by the policy of insurance or annuity contract become secured, or are replaced by benefits which are secured, by one or more of the following means—
  - (i) another policy of insurance or annuity contract which is appropriate within the meaning of section 19(4) of the 1993 Act,
  - (ii) subject to regulations 3, 5 and 6 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996<sup>(8)</sup> in the case of benefits which include guaranteed minimum pensions, the award of supplementary credits under an occupational pension scheme which applies to the employment of the earner at the time of the assignment or surrender or the granting of rights to money purchase benefits under a personal pension scheme, or
  - (iii) in the case only of benefits which are not, and do not include guaranteed minimum pensions, the award of rights to money purchase benefits under a self-employed pension arrangement within the meaning of regulation 12(6)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(9)</sup> or regulation 2A of the Personal Pension Schemes (Transfer Values) Regulations 1987<sup>(10)</sup>.

### **Conditions on which policies of insurance and annuity contracts may be commuted**

4.—(1) The conditions referred to in section 19(4)(c) of the 1993 Act (policy of insurance or annuity contract appropriate where commutation conditional on satisfying prescribed requirements) are—

- (a) that—
  - (i) the benefits secured by the policy of insurance or annuity contract have become payable, and the aggregate of those benefits and all other benefits currently payable or prospectively payable to the earner or, as the case may be, to his widow or her widower under all occupational pension schemes relating to employment with the same employer as the employment in respect of which the benefits secured by the policy of insurance or annuity contract are payable, does not exceed £260 per annum,
  - (ii) an actuary certifies that the methods and assumptions to be used to calculate any benefit in a lump sum form will result in the benefit being broadly equivalent to the annual amount of benefits which would have been payable in pension, and
  - (iii) all of the earner's interest under the policy of insurance or annuity contract is discharged upon payment of a lump sum; or
- (b) subject to paragraph (2), the benefits secured by the policy of insurance or annuity contract have become payable and the earner requests or consents to the commutation, and either the earner—
  - (i) has attained the age of 50, or

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<sup>(8)</sup> S.I. 1996/1462.

<sup>(9)</sup> S.I. 1996/1847.

<sup>(10)</sup> S.I. 1987/1112; relevant amending instrument is S.I. 1988/1016.

- (ii) is suffering from an incapacity or serious ill-health prior to normal pension age.
- (2) The commutation referred to in paragraph (1)(b) does not apply to that part of the benefits which consist of the earner's and the earner's widow or widower's guaranteed minimum pensions.
- (3) For the purposes of paragraph (1)(a)—
  - (a) any benefit in a lump sum shall be treated as an annual amount of benefit in pension;
  - (b) any benefit secured by means of another policy of insurance or annuity contract which is appropriate for the purposes of section 19(4) of the 1993 Act shall be treated as payable or prospectively payable under the occupational pension scheme which was liable to provide it before it was so secured; and
  - (c) any guaranteed minimum pension which is prospectively payable shall be reckoned as having the value that it will have (in accordance with the provisions of the occupational pension scheme in question) when the earner reaches pensionable age.
- (4) For the purposes of paragraph (1)(b)(ii)—
  - “incapacity” means physical or mental deterioration which seriously impairs his earning capacity;
  - “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year.

#### **Other requirements applying to policies of insurance and annuity contracts**

5. The requirements referred to in section 19(4)(d) of the 1993 Act (policy of insurance or annuity contract appropriate if it satisfies such other requirements as may be prescribed) are—
- (a) that the insurance company with which the policy is taken out or the contract entered into assumes an obligation to the earner in question or to trustees of a trust for the benefit of the earner and, if appropriate, dependants of his, to pay the benefits secured by the policy or contract to him or, as the case may be, to dependants of his, or to the trustees of such a trust;
  - (b) that, the policy or contract contains, or is endorsed with, terms so as to provide for any increase, which would have been applicable as a consequence of section 51 (annual increase in rate of pension) and section 52 (restriction on increase where member is under 55) of the 1995 Act had the discharge of liability not taken place, to apply to the benefits which have become secured or been replaced by that policy or contract;
  - (c) that, if any guaranteed minimum pension is due or prospectively due to the earner in question, the policy or contract contains, or is endorsed with, terms so as to provide—
    - (i) that the annuity to be paid thereunder to or for his benefit will be at least equal to the guaranteed minimum pension due to him, or, as the case may be, prospectively due to him, at pensionable age, subject to section 15 (increase of guaranteed minimum pension) or section 16 (revaluation of earnings factors) of the 1993 Act, and
    - (ii) in the case where the earner dies leaving a widow or widower, that the annuity payable for the widow's or widower's benefit will be at least equal to the guaranteed minimum pension due or prospectively due to the widow or widower, and
    - (iii) in each case mentioned in sub-paragraphs (i) and (ii), that any increase of guaranteed minimum pension under Chapter II of Part V of the 1993 Act<sup>(11)</sup> results in a similar increase in the annuity.

<sup>(11)</sup> Chapter II Part V was amended by sections 53(4) and 55 of the Pensions Act 1995.

### **Further conditions on which liability may be discharged**

6.—(1) The conditions referred to in section 19(5)(c)(ii) of the 1993 Act (further conditions on which liability may be discharged) are that the requirements of one or more of paragraphs (2) to (5) are satisfied.

(2) The requirements of this paragraph are satisfied if—

- (a) the earner is dead and benefit is payable to a person other than his widow or her widower; and
- (b) the arrangement for securing the benefit by means of the policy or contract was made at the written request of the person entitled to it, or with the consent of that person given in writing in the form set out in Schedule 1 to these Regulations.

(3) The requirements of this paragraph are satisfied if the benefit is provided as an alternative to short service benefit by virtue of a provision that conforms with the requirements of regulation 9(4) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (bought out benefits without consent)(12).

(4) In a case where an occupational pension scheme is being wound up and sections 73 and 74 of the 1995 Act and regulations made under those sections do not apply, the requirements of this paragraph are satisfied if the earner is able to assign or surrender the policy of insurance or annuity contract and the conditions specified in regulation 3 are satisfied.

(5) The requirements of this paragraph are satisfied if the conditions set out in sub-paragraphs (a) and (b) are satisfied, namely—

- (a) the benefit concerned includes a guaranteed minimum pension that is payable to the earner's widow or widower;
- (b) the trustees—
  - (i) give the widow or widower at least 30 days written notice (“the notice”) of their intention to take out the insurance policy or enter into the annuity contract, and
  - (ii) send the notice to the widow or widower at her or his last known address or deliver the notice to the widow or widower personally.

### **Form of consent**

7. For the purpose of section 19(5)(a)(ii) of the 1993 Act (form of consent to arrangements for securing benefits) the prescribed form is the form set out in Schedule 1 to these Regulations.

## **PART III**

### **DISCHARGE OF LIABILITY TO PROVIDE PENSIONS UNDER A RELEVANT SCHEME**

#### **Prohibition and restriction of the discharge of liability to provide pensions under a relevant scheme**

8. The trustees of a relevant scheme are prohibited or restricted from discharging any liability to provide pensions under a relevant scheme except—

- (a) in the circumstances and on the conditions prescribed in this Part; or

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(12) S.I. 1991/167; relevant amending instruments are 1994/1062, 1995/3067 and 1996/2131.

- (b) where the requirements imposed by the Occupational Pension Schemes (Winding Up) Regulations 1996<sup>(13)</sup> or Part V of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(14)</sup> apply.

### **Circumstances in which liability to provide pensions under a relevant scheme may be discharged**

9.—(1) The trustees of a relevant scheme may discharge any liability to provide pensions under a relevant scheme where the circumstances specified either in paragraph (2) or (3) apply.

(2) The member or, if the member has died, his widow or her widower, or if there is no such widow or widower, any person who may be entitled to payment of the pension under the scheme, consents in writing to the discharge of liability and the transaction to discharge the liability—

- (a) is to be carried out not earlier than the time when the member's pensionable service terminates; and  
(b) satisfies all the conditions specified in regulation 11.

(3) The member's employment is to cease to be contracted-out under section 9(2B) of the 1993 Act and the transaction to discharge liability satisfies all the conditions specified in regulation 11.

### **Meaning of "transaction"**

10. For the purposes of regulation 9 "transaction" means—

- (a) the taking out of a policy of insurance or a number of such policies;  
(b) the entry into an annuity contract or a number of such contracts; or  
(c) the transfer of pensions and accrued rights to such a policy or policies or such a contract or contracts.

### **Conditions on which liability to provide pensions under a relevant scheme may be discharged**

11.—(1) The conditions referred to in regulation 9(2)(b) and (3) which must be satisfied are specified in paragraphs (2) and (3).

(2) The policy of insurance or annuity contract must be taken out or entered into with an insurance company such as is described in section 19(4)(a) of the 1993 Act.

(3) The policy of insurance or annuity contract contains provision to the effect that, or is endorsed so as to provide that—

- (a) except in the circumstances specified in paragraph (4), where a pension or annuity is in payment at the date of the beneficiary's death at least 50 per cent. of the annual rate attributable to pensions and accrued rights under the relevant scheme which was in payment at the date of death shall be payable to the beneficiary's widow or widower;  
(b) except in the circumstances referred to in paragraph (4)(b) and (c), where a pension or annuity is not in payment at the date of the beneficiary's death at least 50 per cent of the accumulated value of the policy of insurance or annuity contract at the date of death attributable to pension and accrued rights under the relevant scheme shall be applied so as to provide a pension or annuity for the beneficiary's widow or widower;  
(c) payments to a beneficiary's widow or widower under the policy or contract which derive from a pension or accrued rights under the relevant scheme shall be subject to the same rate of an annual increase and restrictions which would have applied as a consequence of

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<sup>(13)</sup> S.I. 1996/3126.

<sup>(14)</sup> S.I. 1996/1172.

- section 5 (annual increase in rate of pension) and section 52 (restriction on increase where member is under 55) of the 1995 Act had the discharge of liability not taken place;
- (d) the benefits secured under the policy or contract shall become payable with the beneficiary's consent, and the beneficiary—
- (i) has attained the age of 50 and is under the age of 75, or
  - (ii) is suffering from an incapacity or serious ill-health prior to normal pension age;
- (e) any rights of a beneficiary to a payment under the policy or contract which derive from a pension or accrued rights under the relevant scheme shall be treated as if—
- (i) section 51 and section 52 of the 1995 Act and regulations made under those sections, and
  - (ii) section 12C(1) of the 1993 Act and regulations made under that section, were applicable to them.
- (4) The circumstances referred to in paragraph (3)(a) are—
- (a) the beneficiary marries after having received benefits under the policy or contract;
  - (b) the widow or widower of the beneficiary remarries or lives together as husband and wife with another person to whom he or she is not married after having received benefits under the policy or contract;
  - (c) the widow or widower of the beneficiary is living together as husband and wife with another person to whom he or she is not married at the time of the member's death.
- (5) For the purposes of paragraph (3)(d) "incapacity" and "serious ill-health" have the same meaning as in regulation 4(4).
- (6) For the purposes of paragraph (3)(e) the provisions in the 1993 Act and the 1995 Act shall be construed as if—
- (a) the policy of insurance or annuity contract is a relevant scheme;
  - (b) the insurance company is the trustee of the relevant scheme;
  - (c) the beneficiary is the member of the relevant scheme; and
  - (d) the terms of the policy or contract are the rules of the relevant scheme.

## PART IV REVOCATIONS

**12.** The regulations set out in column (1) of Schedule 2 to these Regulations are revoked to the extent mentioned in column (3) of that Schedule.

Signed by authority of the Secretary of State for Social Security.

Department of Social Security  
11th March 1997

*Oliver Heald*  
Parliamentary Under-Secretary of State,

Status: This is the original version (as it was originally made).

SCHEDULE 1

Regulation 7

FORM OF CONSENT TO ARRANGEMENT FOR SECURING BENEFITS

To the trustees/managers\* of the ..... †  
 Full name of earner/widow/widower\*  
 Present address of earner/widow/widower\*  
 Benefit to be provided by the proposed policy/contract\*:  
 Name of insurer with whom benefits are to be secured:  
 I consent to the securing, under an insurance policy taken out/annuity contract entered into\* with the insurer named above, of the benefits specified above in substitution for benefits which would otherwise have fallen to be provided for or in respect of me under the pension scheme named above.

Signed .....

Date .....

\*delete whichever is inapplicable  
 †insert name of pension scheme.

SCHEDULE 2

Regulation 12

REVOCATIONS

<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Occupational Pension Schemes (Discharge of Liability) Regulations 1985	S.I.1985/1929	The whole of the Regulations.
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1986	S.I. 1986/2171	Regulation 3 and the Schedule.
The Occupational Pension Schemes (Qualifying Service—Consequential and Other Provisions) Regulations 1987	S.I. 1987/1106	Regulation 4.
The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	S.I. 1987/1114	Regulation 7.
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1988	S.I. 1988/476	Regulation 4.
The Personal and Occupational Pension Schemes (Transfer to Self-employed Pension	S.I. 1988/1016	Regulation 4(1).



<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
Arrangements) Regulations 1988		
The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991	S.I. <a href="#">1991/167</a>	Regulation 28 and Schedule 1 in so far as it relates to the Occupational Pension Schemes (Discharge of Liability) Regulations 1985.
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1992	S.I. <a href="#">1992/1531</a>	Regulation 3.
The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	S.I. <a href="#">1994/1062</a>	Regulation 2 and paragraph 6 of Schedule 2 in so far as it relates to The Occupational Pension Schemes (Discharge of Liability) Regulations 1985.
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1995	S.I. <a href="#">1995/35</a>	Regulation 3.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (“the Regulations”) consolidate the Occupational Pension Schemes (Discharge of Liability) Regulations 1985 with minor and drafting amendments and make provision in respect of pensions and accrued rights under a scheme contracted out by virtue of section 9(2B) of the Pension Schemes Act 1993 so far as is attributable to an earner’s service on or after 6th April 1997.

Regulations 2 and 5 prescribe the requirements which apply to policies of insurance and annuity contracts for the purposes of discharging liability.

Regulations 3 and 4 prescribe the conditions on which policies of insurance and annuity contracts may be assigned or surrendered or commuted.

Regulation 6 prescribes further conditions on which liability may be discharged.

Regulation 7 and Schedule 1 set out the form of consent to the arrangements for securing benefits.

Part III makes provision in respect of the discharge of liability to provide pensions under a scheme contracted-out by virtue of section 9(2B) of the Pension Schemes Act 1993 (“the relevant scheme”). Regulations 8, 9 and 11 provide the circumstances in which and conditions on which the discharge of liability to provide pensions under a relevant scheme may occur.

Regulation 10 defines the meaning of “transaction” for the purposes of regulation 9.

**Status:** *This is the original version (as it was originally made).*

Regulation 12 and Schedule 2 provide for revocations.

An assessment of the cost compliance for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, OPS, 11th Floor, Adelphi, 1—11 John Adam Street, London WC2N 6HT.